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09/332,423	10/31/94	MCMASTER	H GLT1463B

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13M1/0130

GRTEE IN EXAMINER	
ART UNIT	PAPER NUMBER
1303	38

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01/30/96

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents.

Office Action Summary

Application No. 08/332,423	Applicant(s) McMaster et al.
Examiner Steven P. Griffin	Group Art Unit 1303



Responsive to communication(s) filed on Nov 24, 1995

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-16 and 26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-16 and 26 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on Nov 24, 1995 is approved disapproved.

The specification is objected to by the Examiner.

^{Reissue} The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

... SEE OFFICE ACTION ON THE FOLLOWING PAGES ...

Art Unit: 1303

Part III DETAILED ACTION

Response to Amendment

1. The amendments of the specification and claims 7 and 9, filed 11-24-95, have not been entered because they do not comply with the requirements of 37 C.F.R. § 1.121(e), which sets forth the manner for amending in a reissue application. See MPEP § 1453 for examples on the correct way for making amendments to the specification and claims of a reissue.

Drawings

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 11-24-95 have been approved.

3. The drawings are objected to because they do not include certain reference signs mentioned in the description. 37 CFR § 1.84(p) states, "Reference characters mentioned in the description must appear in the drawings." The following reference signs are not included in the drawings: "16'". Correction is required. [Note: if the amendment of column 4, line 51, filed 11-24-95, is submitted in correct format this objection would be overcome]

Art Unit: 1303

Specification

4. The disclosure is objected to because of the following informalities: Column 4, line 18, it is believed that "3" should be --5--. Appropriate correction is required. **[Note: if the amendment of column 4, line 18, filed 11-24-95, is submitted in correct format this objection would be overcome]**

5. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

Claim 26 has no support for moving or changing the position of surface of the quench tubes so as to conform to the glass sheet which is intended to be tempered. The glass sheet is either tempered in the flat condition as received, and thus there are no means as specified in claim 26, or the flat sheet is bent using the disclosed apparatus prior to tempering. The sheet must be received by the apparatus in a flat, heated condition for bending prior to tempering of the bent glass sheet in place, i.e.

Art Unit: 1303

bending is essential for enabling tempering with the apparatus when the platens are in a deformed state.

Claim Rejections - 35 USC § 112

6. Claim 26 is rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

7. Claims 1-16 and 26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 13, claim 15, line 13, and claim 16, line 13, "opposing the first platen" is not clear as to what is opposing the first platen is it the "second platen" or the "quench openings" or both. ✓

Claim 2, line 2, it is suggested that --actuator-- be inserted before "devices", this suggestion is made so as to provide terminology consistency as claim 3 provides "actuator devices". Claim 2, line 4, "the proper distance,, lacks antecedent basis. ✓

Claim 4, line 1, "the speed of the actuator" lacks antecedent basis. ✓

Claim 6, line 2, "the opposed bending platens" lacks antecedent basis. Claim 6, line 5, "the lower bending platen" lacks antecedent basis. □

Art Unit: 1303

Claim 6, line 4, claim 9, lines 2-3 and 4-5, claim 15, line 26, and claim 16, lines 20-21 and 35, "said upper platen" lacks antecedent basis.

Claim 6, lines 6-7, 9, and 10, claim 7, lines 1-2 and 6, claim 15, line 23, and claim 16, line 31, "the lower platen" lacks antecedent basis.

Claim 6, lines 7-8, claim 8, lines 1-2 and 5, claim 9, lines 1-2, claim 15, lines 29-30, and claim 16, lines 38-39, "the upper platen" lacks antecedent basis.

Claim 6, line 12, claim 15, line 19, and claim 16, line 27, "said lower platen" lacks antecedent basis.

Claim 7, lines 8-9 [Note: if the amendment of claim 7, filed 11-24-95, is submitted in correct format this rejection would be overcome], claim 11, line 3, claim 15, line 25, and claim 16, lines 33-34, "the bending and quenching" lacks antecedent basis as the there is no basis for quenching.

Claim 9, line 6, "said template,, lacks antecedent basis.

[Note: if the amendment of claim 9, filed 11-24-95, is submitted in correct format this rejection would be overcome]

clm 12 Claim 15, line 21, "platen" is unclear what platen it is referring to.

Claim 26, it is not clear where the glass sheet is located so it is not clear how the tubes conform to it. Claim 26,

Art Unit: 1303

lines 5-6, "the glass sheets" lacks antecedent basis as it refers to plural sheets.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Bocelli et al 4,540,425 (Bocelli '425).

Bocelli '425 discloses an apparatus for bending glass sheets comprising a first platen (see the lower portion of the apparatus in Figs. 1-3) which receives glass sheets, includes actuator means which moves portions of the first platen a specific distance to deform the platen, and has openings in nozzles (17) which form a part of the first platen and are movable with the deformation of the first platen, Bocelli '425 also discloses the apparatus as having a second platen (see the upper portion of the apparatus in Figs. 3-6) with nozzles (18) and a means (23, 24)

Art Unit: 1303

for supplying quench gas to the first and second quench openings.

10. Claim 26 is rejected under 35 U.S.C. § 102(b) as being anticipated by Cheron '752.

Cheron '752 discloses an apparatus for tempering glass comprising upper and lower quench tubes (13, 21), means (see col. 5, line 30 - col. 6, line 39, and Fig. 11) for moving the quench tubes to conform to the glass sheet, means (2, 3) for engaging the glass sheets and means (20, 11) for supplying quench gas to temper the glass sheets.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered

Art Unit: 1303

therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

12. Claim 6 is rejected under 35 U.S.C. § 103 as being unpatentable over Bocelli '425.

Bocelli '425 discloses a template (8 or 9) which is mounted so when the platens deform they contact the template which controls the curvature of the platens and thus the curvature of the glass. It is noted that the template in Bocelli '425 is located below the first platen (see the lower portion of the apparatus in Figs. 1-3) whereas claim 6 claims the template above the upper platen but it is considered that it would have been obvious to one of ordinary skill in the art the locating the template of Bocelli '425 above the platens and thus deforming the platens of Bocelli '425 to contact this template would have been an obvious modification in the location of a known part in order to provide for a way of controlling the shape of the curvature of the glass sheet.

Reissue Oath/Declaration

13. The reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors relied upon, as required under 37 C.F.R. 1.175(a)(5).

Art Unit: 1303

The reissue declaration fails to particularly specify every error relied upon, every departure from the original patent represents an "error" in the original patent under 35 U.S.C. 251 and must be particularly and distinctly specified and supported in either the original or a supplemental oath or declaration under 37 CFR 1.175. The declaration should refer to every departure from the original patent, for example the changes to claim 1, and specify the error relied upon. Further, in addition to the previously filed amendments the declaration further fails to provide any discussion of the changes made to the specification, claims and drawings, in the amendment filed 11-24-95.

14. The reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors and/or how the errors relied upon arose or occurred as required under 37 CFR 1.175(a)(5). Included are inadvertent errors in conduct, i.e., actions taken by the applicant, the attorney or others, before the original patent issued, which are alleged to be the cause of the actual errors in the patent. This includes how and when the errors in conduct arose or occurred, as well as how and when these errors were discovered. Applicant's attention is directed to *Hewlett-Packard v. Bausch & Lomb*, 11 USPQ2d 1750, 1758 (Fed. Cir. 1989). The declaration should specifically refer to every error in the patent and explain how

Art Unit: 1303

the errors arose or occurred, for example, the declaration should refer to "two step" (and all the other errors) and provide a specific explanation of how this error arose. Further, the declaration fails to provide any discussion of the changes made to the specification, claims and drawings, in the amendment filed 11-24-95.

15. Claims 1-16 and 26 are rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. § 251. See 37 C.F.R. 1.175.

Every departure from the original patent represents an "error" in the original patent under 35 U.S.C. 251 and must be particularly and distinctly specified and supported in either the original or a supplemental oath or declaration under 37 CFR 1.175. Any subsequent changes in the specification or claims require an updated supplemental oath or declaration specifically directed to and supporting these changes. As set forth in the first office action and the previous office actions, the reissue oath or declaration must particularly specify (1) the excess or insufficiency in the claims and (2) how the reissue overcomes the defect in the original patent, e.g. describe how the newly presented or amended claims differ from those of the original patent. The reissue declarations of record do not address, in the above manner, the changes to patent claims 1, 15, and 16, as presented in the amendment filed 3-2-95 and the changes made to

Art Unit: 1303

the specification, claims and drawings, in the amendment filed 11-24-95. The reissue declarations of record do not point out very specifically what the defects are and how and when the errors arose, and how and when errors were discovered. Further, as set forth in the first office action, failure to omit a limitation is not "error", where the claims can only be enabled with the limitation present. The disclosed apparatus is for bending the flat glass sheet followed by tempering of the bent glass sheet. The sheet must be received by the apparatus in a flat, heated condition for bending by changing the contour of the platens prior to tempering of the bent glass sheet in place, i.e. bending is essential for enabling tempering of a bent glass sheet with the platens contoured according to the bending step. Claims directed to an invention different from that of the patent are not proper for the filing of a reissue application; see MPEP 1412.01 and 1450. Claim 26 is not directed to the bending and tempering apparatus of the patent claims. Applicant is trying to now add different inventions to the patent by way of reissue which is totally inappropriate. These claims are rejected under 35 USC 251 as not being directed to error and not being for the invention in the original patent.

16. Note: the declarations must provide the residence and post office address of each inventor.

Response to Arguments

17. Applicant's arguments filed 11-24-95 have been fully considered but they are not deemed to be persuasive. Regarding the arguments pertaining to the 35 USC § 112, first paragraph rejection of claim 17, which is now written as claim 26, it is argued that adequate support is provided in the specification as discussed previously in the amendment filed 4-12-94. It is considered that these arguments are not deemed persuasive and the discussion regarding these arguments in the Office Action mailed 5-31-94 should be referred to. It is argued that Bocelli fails to disclose a glass bending and tempering apparatus wherein movable platens move with the glass sheet therebetween and thereafter temper the glass sheet. It is considered, as stated in the above rejection, that Bocelli does discloses an apparatus which comprises a first platen which is deformable, an actuator to deform the first platen, quench openings in the first platen which move with the deformation of the first platen, a second platen with quench openings, and means for supply quench gas to the openings, applicant's argument has failed to point out any portions of Bocelli which would support the conclusion that the invention is not anticipated or obvious over Ocelli as stated above. Regarding the argument that the reissue oath/declaration particularly specifies the errors, it is noted that every error (i.e. change made to the patent) must be addressed in the oath

Art Unit: 1303

and at this time they are not, for example the changes made to claim 1 have not been specifically discussed and the changes submitted in the amendment filed 11-24-95 have never been addressed with an oath/declaration.

18. The argument that the Reunamaki et al '962 patent is not prior art under 35 USC § 102(e) has been considered and is deemed persuasive, the rejection of claim 1 over Reunamaki '962 under 102(e) is withdrawn. The argument regarding the "reviewed and understands" and "duty to disclose" clauses of the declaration is noted and the objection withdrawn.

Information Disclosure Statement

19. The discussion of the Finland, German, and European references is noted but the references have not been considered as to the merits because applicant has failed to file a certification or 1.17(p) fee which is required when art is to be considered after the first Office Action and before the final action or notice of allowance. See MPEP § 609.

Conclusion

20. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

Art Unit: 1303

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven P. Griffin whose telephone number is (703) 308-1164. The examiner can normally be reached on Monday-Thursday from 6:30 AM-4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Czaja, can be reached on (703) 308-3852. The fax phone numbers for this Group are (703) 305-7115, 7718, or 7719.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Donald Czaja
DONALD E. CZAJA
SUPERVISORY PATENT EXAMINER
GROUP 130

SPG
January 26, 1996